UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION 5:05CV273-3-MU

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THIS MATTER is before this Court upon a Complaint pursuant to 42 U.S.C. §1983, filed on November 9, 2005 (Document No. 4.) On February 17, 2005, Defendants filed a Motion for Summary Judgment with a supporting brief. It appears that the Defendants may be entitled to summary judgment as a matter of law.

The Plaintiff is advised that under the provisions of Rule 56(e) of the Federal Rules of Civil Procedure, he is required to submit documents, affidavits, or unsworn declarations made under penalty of perjury, in opposition to the Motion for Summary Judgment and supporting documents filed by the Defendants. Rule 56(e) reads in pertinent part as follows:

When a motion for summary judgment is made and supported [by affidavits], an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided by this rule, must set forth specific facts showing that there is genuine issue for trial. If he does not respond, summary judgment, if appropriate, shall be entered against him.

This rule requires that if the Plaintiff has any evidence to offer to counter the evidence contained in the Motion for Summary Judgment and supporting documents filed by the Defendant,

he must present it to the Court in the form of documents, affidavits, or unsworn declarations under

penalty of perjury. An affidavit is a written statement made under oath; that is, a statement prepared

in writing by the Plaintiff and sworn before a Notary Public. Plaintiff may not allege new facts

surrounding the events in question as part of your reply. Plaintiff should base his reply and

argument(s) solely on the matters set forth in the original Complaint and/or those set forth in the

Defendants' Motion. If the Plaintiff chooses, he may instead submit an unsworn declaration and

state the following with the date and his signature:

"I declare under penalty of perjury that the foregoing is true and

correct."

PLAINTIFF McCLELLAND READ THIS:

The Plaintiff is further hereby advised that he has thirty (30) days from the filing of this Order

in which to file documents, affidavits, or unsworn declarations in opposition to the Defendant's

Motion for Summary Judgment. FAILURE TO RESPOND WITHIN THIS TIME PERIOD

MAY SUBJECT THIS ACTION TO SUMMARY JUDGMENT.

THEREFORE, IT IS HEREBY ORDERED that the Plaintiff has thirty(30) days from the

filing of this Order in which to provide his own documents, affidavits, or declarations countering the

evidence offered by the state's Motion for Summary Judgment.

SO ORDERED.

Signed: February 24, 2006

Graham C. Mullen

United States District Judge

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